

IC 13-30-9

Chapter 9. Environmental Legal Actions

IC 13-30-9-1

Application of chapter

Sec. 1. This chapter applies to actions brought by the state or a private person. However, this chapter does not apply to an action brought by the state if the action arises from a site that:

- (1) is listed on the National Priorities List for hazardous substance response sites (40 CFR 300 et seq.);
- (2) scores at least twenty-five (25) under the Indiana scoring model under 329 IAC 7; or
- (3) is deemed by the commissioner to pose an imminent threat to human health or the environment.

As added by P.L.59-1997, SEC.23.

IC 13-30-9-2

Grounds

Sec. 2. A person may bring an environmental legal action against a person who caused or contributed to the release of a hazardous substance or petroleum into the surface or subsurface soil or groundwater that poses a risk to human health and the environment to recover reasonable costs of a removal or remedial action involving the hazardous substances or petroleum.

As added by P.L.59-1997, SEC.23.

IC 13-30-9-3

Allocation of costs of removal or remedial action

Sec. 3. (a) In resolving an environmental legal action, a court shall allocate the costs of the removal or remedial action in proportion to the acts or omissions of each party, without regard to any theory of joint and several liability, using legal and equitable factors that the court determines are appropriate, including the following:

- (1) The degree of care exercised by each party with respect to the release of the hazardous substance or petroleum caused or contributed to by each party.
- (2) The amount and characteristics of the hazardous substance or petroleum that was released.
- (3) The risks posed by the hazardous substance or petroleum based on the use of the site at the time the hazardous substance or petroleum was released into the environment and the cost effectiveness of the removal or remedial action to address the risks.
- (4) Whether a party's acts or omissions violated a federal, state, or local statute, rule, regulation, or ordinance.
- (5) The extent to which each party exercised actual and direct managerial control over the site where the hazardous substance or petroleum was released at the time of the release.
- (6) Whether an award of reasonable costs, including attorney's fees, to a party involved in the environmental legal action is

appropriate.

(7) Other equitable factors, including unjust enrichment, that the court determines are appropriate.

(b) Notwithstanding subsection (a), if parties have entered into a contract that allocates the costs or responsibility for the removal or remedial action, the terms of the contract control the allocation of costs between the parties to the contract. However, the terms of a contract may not affect the recovery of costs by the state unless the state is a signatory to the contract.

As added by P.L.59-1997, SEC.23.

IC 13-30-9-4

Payment of unrecovered costs

Sec. 4. If the commissioner is not able to recover the total costs of a removal or remedial action from the responsible parties under this chapter, the unrecovered costs may be paid from the hazardous substances response trust fund established under IC 13-25-4-1.

As added by P.L.59-1997, SEC.23.

IC 13-30-9-5

Defenses

Sec. 5. A defendant in an environmental legal action may assert defenses provided by law or equity, including a defense that damages suffered by the person who brought the environmental legal action were caused in whole or in part by a nonparty.

As added by P.L.59-1997, SEC.23.

IC 13-30-9-6

Restrictions on actions involving underground storage tanks

Sec. 6. In an action to recover costs associated with a release from an underground storage tank, a person may bring the action under:

- (1) this chapter; or
- (2) IC 13-23-13-8.

A person may not bring the action under both this chapter and IC 13-23-13-8.

As added by P.L.59-1997, SEC.23.

IC 13-30-9-7

Immunity from actions

Sec. 7. Notwithstanding any provision of this chapter, a person that receives a covenant not sue under IC 13-25-5-18 is exempt from suit as provided in IC 13-25-5-18.

As added by P.L.59-1997, SEC.23.

IC 13-30-9-8

Limited construction

Sec. 8. This chapter may not be construed to affect any litigation filed before February 28, 1998, under IC 13-23-13.

As added by P.L.59-1997, SEC.23.